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DEC 16 2005

**DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600
DECISION ON REQUEST
TO ACCEPT MODEL
OR EXHIBIT
INTO THE RECORD**

ERIC W. CERNYAR, P.C.
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In re Application of
David M. Tumey, et al.
Application No. 09/488,390
Filed: January 19, 2000
For: **ANIMATED TOY UTILIZING
ARTIFICIAL INTELLIGENCE AND
FINGERPRINT VERIFICATION**

This is a decision on the petition filed March 19, 2005, pursuant to 37 C.F.R. §1.91, requesting acceptance of a Model or Exhibit

Petitioner states that in order to comply with the diligence requirements of 37 C.F.R. §1.131 in an effort to swear behind a reference, applicants must submit evidence in the form of executable software modules on CD, which evidence creation dates. In addition, a second CD establishes evidence of actual reduction to practice.


37 C.F.R. §1.91 Models or exhibits not generally admitted as part of application or patent, states in part:

- (a) A model or exhibit will not be admitted as part of the record of an application unless it:
 - (1) Substantially conforms to the requirements of § 1.52 or § 1.84;
 - (2) Is specifically required by the Office; or
 - (3) Is filed with a petition under this section including:
 - (i) The fee set forth in § 1.17(h); and
 - (ii) An explanation of why entry of the model or exhibit in the file record is necessary to demonstrate patentability.
- (b) Notwithstanding the provisions of paragraph (a) of this section, a model, working model, or other physical exhibit may be required by the Office if deemed necessary for any purpose in examination of the application.
- (c) Unless the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84 under paragraph (a)(1) of this section, it must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84. [emphasis added]

Applicants have paid the required petition fee and provided an explanation of why entry is necessary. In addition, given that the evidence on the first CD is executable software modules whereby executable modules do not lend themselves for depiction in a photograph, petitioner's request to waive the requirement of 37 C.F.R. §1.91, specifically 37 C.F.R. §1.91(c) wherein the model must be accompanied by photographs, is accepted.

Applicants have satisfied the requirements set forth in 37 C.F.R. §1.91 above for the inclusion of a model or exhibit as part of the application record.

Therefore, the petition is GRANTED.


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